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SUBJECT: UNCHARTED TERRITORY: USG DELEGATION TO GUATEMALA
AND THE CAFTA-DR LABOR COMPLAINT

REF: GUATEMALA 647

11. SUMMARY: During the week of July 29, a USG delegation visited Guatemala to discuss next steps for the CAFTA-DR labor complaint. The purpose of the visit was three-fold: to verify the achievements made to date in the five cases; to discuss the issues still outstanding in each of the cases; and to begin the development of a long-term workplan the GOG can use to address the systemic issues evident in the complaint. The delegation, composed of three officials from the Office of the United States Trade Representative (USTR), one official from the Department of Labor (DOL), and one from State, as well as Embassy officers, met with representatives from the business, labor, and government sectors. The meetings provided insight on the current situation in the country and allowed the USG representatives to address directly each of the sectors involved. As a result of the meetings, the GOG agreed to continue to address the short-term issues specific to each case and to formulate a long-term workplan, a draft of which is to be to DOL by August 28th. END SUMMARY.

The Business Sector

12. Meetings with AmCham; the Coordinating Committee of Agriculture, Commercial, Industrial, and Finance Associations (CACIF); and the Commission of the Clothing and Textiles Industry (VESTEX) revealed that the business sector does not believe that strengthening the labor sector is a priority for them. However, members of all three organizations did express their support for national law and insisted they encourage all of their members to comply with labor laws, including allowing labor and other inspectors to enter places of business. Nevertheless, during the meeting with AmCham, the Executive Director discounted the International Trade Union Confederation's 2009 Annual Survey of Violations of Trade Union Rights that listed Guatemala as the second most dangerous country in the hemisphere for trade unionists. She and the labor committee with whom the delegation met cited statistics from the Ministry of Labor on the increase in the approval of unions and used them as evidence of the GOG's support for labor. The Labor Committee blamed many of the problems between the business and labor sector on the justice system, stating that corruption and slow case-processing embitters petitioners, and that the system needs a significant overhaul. They claimed that many labor courts are overly sympathetic to the workers and make it difficult for the employers to make their case. The committee also decried the labor inspectorate, saying the training of inspectors was inadequate and that many inspectors did not understand how businesses work. AmCham expressed interest in being part of future inspector trainings, volunteering to

train inspectors in corporate vision.

13. The managers at VESTEX were equally defensive, reminding the delegation it was not the responsibility of VESTEX to create or promote unions in the maquilas. The meeting with CACIF was the least defensive. One of the members of the labor committee suggested two legislative proposals on which CACIF would like to work with the labor sector, and jointly seek congressional passage. However, another member of CACIF commented that he felt the USG was punishing the entire private sector for a few cases of non-compliance.

14. In each of the private sector meetings, the delegation reinforced the purpose of the visit was to encourage compliance with the commitments made by Guatemala under the CAFTA-DR, including enforcement of national law, and asked for continued support from the sector for systemic change. The delegation expressed its hope that there will not be another labor complaint from Guatemala.

The Labor Sector

15. The delegation's meeting with FESTRAS, the Federation of Food Workers and Similar Professions, provided a look into the lives of the workers in the Avandia, Fribo/Modas Dae Hang, and INPROCSA cases. Many of the workers reinstated at Avandia and Modas Dae Hang attended the meeting and shared with the delegation what they had experienced since reinstatement. Their stories ranged from the positive (e.g., the workers at Avandia have received two of the four back-pay payments and are on track to receive the third in a few

weeks), to the not so encouraging (e.g., the human resources manager at Avandia has encouraged the other workers to lock the reinstated workers in a room, pour gasoline on them, and light them on fire). Common complaints from the workers include lack of access to the social security health care system, forced isolation from the rest of the workforce, unsanitary conditions in the restrooms and cafeteria, and the lack of follow-up from the inspectors. The workers from INPROCSA have yet to be reinstated.

16. When asked for suggestions to address long-term, systemic changes, Rafael Sanchez, part of FESTRAS' legal team, emphasized it is important not to change the law but to develop and implement it. He also told the delegation that the stories of the workers at Avandia and Modas Dae Hang are not unique to those two maquilas but are indicative of the treatment of workers in the majority of maquilas in the country.

17. The delegation also met with leaders from four of the major union collectives: the General Central of Guatemalan Workers (CGTG), the Confederation of Unions of Guatemala (CUSG), Syndicate Union of Guatemalan Workers (UNSITRAGUA) and the Guatemalan Movement of Unions, Indigenous, and Peasant Farmers (MSICG). The union leaders expressed their frustration with the government, stating they believed the GOG was supporting only the unions that were politically aligned with the current administration and was denying the challenges facing labor law enforcement in the country. In addition, pressure from the private sector to avoid workplace inspections has created a frustrating atmosphere for the union.

18. Throughout the conversation, the workers reminded the delegation that they had opposed CAFTA-DR from the beginning and wanted the USG to renegotiate it.

The Government Sector

19. Vice Minister of Labor Mario Roberto Illescas was very responsive. He told the delegation that he believed he had

complied with the four points USTR General Counsel Tim Rife had asked him to follow up on during the meeting they had in Washington in early July. He, nevertheless, volunteered to submit a draft of a long-term workplan to the Department of Labor within 15 days of the delegation's visit. He told the delegation he would ask the MFA to convene the Multi-Institutional Committee on Labor to work on the draft, ensuring buy-in from the ministries that participate. He updated the delegation on each of the cases, providing dates of inspections and collecting the documents that reflect the inspectors' comments. He also volunteered that he feels the Ministry is close to a break-through in the INPROCSA case. He said it would be a few weeks until he knew more. The Vice Minister also promised to follow up on reports that the reinstated workers at Avandia and Modas Dae Hang are being harassed, as well as the agreement the Ministry has with IGSS (the Social Security Institute).

¶10. Vice Minister of Foreign Affairs Lars Pira told the delegation the MFA acted as a kind of moderator in the multi-institutional process and he was willing to support the development of a workplan as much as possible. He said the MFA regularly meets and has good relations with many civil society actors. However, he said labor union representatives had repeatedly refused to meet. When pressed to elaborate, the Vice Minister declined, saying he did not want to get into the reasons for that.

¶11. In the meeting with the Ministry of Government's Vice Minister for Justice Donald Gonzalez, the delegation asked about the lack of arrest warrants in the Marco Tulio Ramirez case and the outstanding arrest warrant in the Pedro Zamora case. In response, the Vice Minister shared with the delegation that, when it came to criminal cases, one of the biggest issues needing clarification was who has the responsibility for criminal investigations. As it stands, once a crime has been committed, the National Civil Police (PNC) arrives to the crime scene and is to cordon it off. The Public Ministry is then to arrive to collect evidence. Once they have finished their report, they are to turn the case over to the judicial branch, which then issues arrest warrants. The Vice Minister said it could take 2-3 months to issue an arrest warrant in any given case. He did not address the two specific cases beyond saying he is working on them.

¶12. Minister of Economy Ruben Morales, Vice Minister of Economy David Cristiani, and Vice Minister of Labor Illescas met with the delegation jointly. Minister Morales assured the delegation the GOG is in favor of CAFTA-DR and wants to continue the close relationship it has with the US. He told the delegation he has been working with the Ministry of Labor to upgrade the MOL's laws and was more than willing to help with a long-term workplan. During the meeting the minister confirmed that tax benefits for Fribo/Modas Dae Hang had been canceled since 2005, and he promised to look into whether INPROCSA was currently receiving tax benefits.

¶13. Supreme Court Magistrate Luis Fernandez Molina provided the delegation with the view of the labor situation from the judicial perspective. He said that businesses are hostile to unions. He attributed this to the common perception that unions seek to destroy business. Fernandez also clarified the 24-hour regulation on reinstatement listed in the labor code. He volunteered that although the regulation exists, many judges do not use it due to employer disgruntlement with the regulation. Some employers have reported that workers abuse the process to seek reinstatement for people who were never employed in the first place. Therefore, many employers are skeptical of reinstatement orders and frequently need more than 24 hours to verify that everyone on the reinstatement list actually worked at the business.

¶14. COMMENT: This visit allowed the delegation to gain insight from each of the sectors involved in the labor complaint and to see first-hand how the three sectors

involved in the complaint seem to talk past each other. Different actors involved understand the seriousness of the complaint to different degrees. The private sector remains dismissive of the complaint. GOG attitudes reflected a feeling of substantial accomplishment to date and deferential compliance with USG requests. While it is true the GOG has made significant steps in several of the cases, there is still much work to be done. In none of the cases have all recommendations been implemented. Nevertheless, the reinstatement of the workers at the Avandia and Modas Dae Hang factories is a significant step. The workplan the GOG proposes to formulate will hopefully provide a tool with which it can begin to address systemic issues and track progress.

McFarland